



CITY OF SAN ANTONIO
TRANSPORTATION & CAPITAL IMPROVEMENTS

REQUEST FOR PROPOSAL:

**ON-CALL BUILDING SYSTEMS TESTING, ADJUSTING & BALANCING
SERVICES**

(RFP – TCI03112016MG)

**RFP ISSUE DATE:
March 18, 2016**

**SUBMITTAL DEADLINE:
APRIL 19, 2016 AT 2:00 P.M. LOCAL TIME**

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CITY OF SAN ANTONIO

ON CALL BUILDING SYSTEMS TESTING, ADJUSTING & BALANCING SERVICES

I. BACKGROUND

The City of San Antonio's (hereafter referred to as "City"), Transportation and Capital Improvements Department (hereafter referred to as "TCI") is seeking Proposals from qualified firm(s) to provide Testing, Adjusting and Balancing (hereafter referred to as "TAB") of HVAC systems services on an on-call or as needed basis. An on-call service agreement contract, pursuant to this solicitation, may be awarded to one or multiple firms in response to this RFP. The selected firm(s) shall be retained in a standby mode. The awarded contract(s) term shall be for one (1) year term with three (3) optional one-year extensions. The enabling Ordinance shall identify the not-to-exceed total amount of money that may be expended under the awarded contract(s), in connection with this RFP. City neither guarantees all sums authorized will be spent under the awarded on-call agreement(s) nor any minimum amount of work will be authorized.

City often has new or existing municipal facilities requiring HVAC testing, adjusting and balancing. The on-call services required for HVAC testing, adjusting and balancing may range in scale from strategic planning of systems, evaluation of design data, examining design data description, evaluation of systems for environmental conditions, evaluation for systems output, examination of Contracts documents for project requirements, testing, balancing, inspection of new and existing equipment, reporting and system recommendations, documentation and step by step procedural write-up. Firms responding to this RFP shall self-perform the majority of the work.

II. SCOPE OF WORK

The selected Respondent(s) shall provide HVAC testing, adjusting and balancing services as needed for municipal facilities. The selected Respondent(s) should demonstrate their ability and past experience relative to, but not limited to, the following:

- Quality Assurance and Compliance;
- TAB and LEED Certification;
- Certify TAB data reports and plans;
- Submittal of strategies and procedural plans;
- Contract documentation examination reporting;
- Analysis of existing and new systems;
- Instrument calibration reporting;
- Meeting coordination and cooperation with multiple user groups regarding the approval of TAB strategies, procedures and development of details;
- Site coordination, based on project conditions;
- Benchmarking of best existing practices;
- Examination of Installed systems and approved submittal data;
- Examination of design data, descriptions, statements of design assumptions for environmental conditions and systems' output and statements of philosophies and assumption about HVAC system and equipment controls;
- Comprehensive examination of equipment performance data;
- Preparation of TAB plans, to include strategies, step-by-step procedures and schematic diagrams of systems for "as-builts";
- Observation and recording of systems, to include deficiencies discovered before and during performance of TAB procedures;
- Complete system readiness checks and final reporting;

- Performance testing and balancing procedures on systems according to procedures contained in ASHRAE 111, NEBB's "Procedural Standards for Testing, Adjusting, and balancing Environmental Systems" and SMACNA's "HVAC Systems-Testing, Adjusting, and Balancing";
- Preparation of schematic diagrams of systems "as-built";
- Initial and final inspections of systems;
- Yield measurements, tolerances and system failure reporting;
- Inspection coordination;
- Corrective action, system adjustment and system maintenance, to include mark-up of equipment and balancing device settings (including damper-control positions, valve position indicators, fan-speed-control levers, and similar controls and devices) with suitable permanent identification material to show final settings.
- System maintenance;
- Sustainable building practices, energy conservation and Feasibility of LEED or other environmental policies;
- Code conformance and required overlays compliance; and
- Specialty component services, to include the development of detailed space needs analysis, comment regarding site analysis and related comprehensive services, based on industry best practices.

III. SCHEDULE OF EVENTS

The following tentative schedule has been prepared for this Project.

Pre-Submittal Conference:	April 4, , 2016
Deadline for Submission of Written Questions:	April 7, 2016
Responses Due:	April 19, 2016
Anticipated City Council Consideration	August (TBD)

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference is scheduled to be held on **Monday, April 4, 2016 at 10:00 A.M. at the Municipal Plaza Building, Plaza B Room, located at 114 W. Commerce, San Antonio, Texas 78205.** Attendance at the Pre-Submittal Conference is optional but strongly encouraged. Respondent is encouraged to prepare and submit its questions in writing three (3) calendar days in advance of the Pre-Submittal Conference, in order to expedite the proceedings.

City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>.

The meeting place is accessible to disabled persons. The Municipal Plaza is wheelchair accessible. Accessible parking spaces are available. Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses and posted on City's website at <http://epay.sanantonio.gov/RFPListings/>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of City shall not be binding on City.

V. SUBMITTAL DOCUMENT REQUIREMENTS AND EVALUATION CRITERIA

City shall conduct a comprehensive, fair and impartial evaluation of all submittals received in response to this RFP. City may appoint a selection committee to perform the evaluation. Each submittal shall be analyzed to determine overall responsiveness and qualifications under the RFP. The selection committee may select all, some or none of the submitting Respondents. If City elects to conduct interviews, Respondent may be interviewed and re-scored based upon these same criteria, or other criteria to be determined by the selection committee.

Respondent's submittal shall include the following items in the following sequence:

1. EXECUTIVE SUMMARY – Respondent shall include a one-page Executive Summary for the Statement of Qualifications ("SOQ"). The summary shall state the number of years in business, number of years in business in the local office, local office address and number of employees employed in local office.
2. SUBMITTAL COVER / SIGNATURE PAGE (Form #1) – Respondent shall include the completed Submittal Cover/Signature Sheet with submittal, indexed or labeled as "**Tab 1**". The Submittal Cover/Signature Sheet shall be signed by a person, or persons, authorized to bind the entity or entities submitting the response. Submittals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Joint ventures require signatures from all firms participating in the joint venture. Joint ventures are required to provide legal proof of the joint venture, such as a joint venture agreement, as an attachment to its submittal.
3. SUBMITTAL CHECKLIST AND TABLE OF CONTENTS (Form #2) – Respondent shall complete this form, which is to be used as the Table of Contents for its submittal. The checklist shall be indexed or labeled as "**Tab 2**" in submittal.
4. DISCRETIONARY CONTRACTS DISCLOSURE FORM (Form #3) – Respondent shall complete the form online at <https://www.sanantonio.gov/eforms/atty/ContractsDisclosureForm.pdf>, print a copy of the completed form and submit the form as "**Tab 3**" in its **ORIGINAL SUBMITTAL ONLY**. If Respondent is proposing as a team or joint venture, each party/entity to that team or joint venture shall complete and submit a separate form with the submittal.
5. LITIGATION DISCLOSURE FORM (Form #4) – Respondent shall complete a Litigation Disclosure form, utilizing additional pages for explanation, if necessary, and submit the form indexed or labeled as "**Tab 4**" in submittal. If Respondent is proposing as a team or joint venture, then each party to that team or joint venture shall completed and submit a separate form with the submittal.
6. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (FORM 5) – Respondent shall submit a completed and signed Subcontractor/Supplier Utilization Commitment Form. Absent a waiver granted by the City of San Antonio Economic Development Department, failure to submit a completed Subcontractor/Supplier Utilization Commitment Form in its response shall render Respondent's submittal **NON-RESPONSIVE**. This form shall be indexed and labeled as "**Tab 5**" in the submittal.
7. CONTRACT TEMPLATE AND GENERAL CONDITIONS (Indexed and labeled as "**Tab 6**") – Respondent is to review City's Contract Template and its General Conditions, attached hereto, incorporated herein by reference and labeled as RFP **Exhibit A** and **Exhibit B**, and provide written comments and/or concerns regarding the Contract and General Conditions. If Respondent does not have any comments and/or concerns, Respondent shall indicate this in Tab 6. If no objections are submitted by the Respondent, City shall presume that Respondent shall sign the agreement as presented, if a contract is awarded.
8. PROOF OF INSURABILITY (Indexed and labeled as "**Tab 7**") – Respondent shall submit a copy of its current insurance certificate.

9. LETTERS OF REFERENCE (required) – Respondent shall provide a maximum of five (5) letters of reference. Letters of Reference shall be indexed and labeled as “**Tab 8**”.
10. CERTIFICATE OF INTERESTED PARTIES TEC FORM 1295 (Indexed and labeled as “**Tab 9**”) – Effective January 1, 2016, the City of San Antonio is required to comply with Texas Government Code, Chapter 2252, Subchapter Z, Section 2252.908 (hereafter referred to as “the Code”). The Code states City shall not enter into a contract with a business entity unless and until the business entity has submitted a Certificate of Interested Parties (hereafter referred to as “Form 1295”) to City for filing with the Texas Ethics Commission (hereafter referred to as “TEC”). The Form 1295 requirement imposed upon City applies to ALL contracts:
- having a value greater than \$50,000;
 - requiring San Antonio City Council approval; and/or
 - renewals, extensions or amendments that must be approved by the San Antonio City Council.

TEC has made available on its website the new filing application that must be used by Respondent to file its Form 1295 with the City. Respondent shall use TEC’s application to enter the required information on Form 1295 and print a copy of the form containing a unique certification number for that response.

An authorized agent of Respondent then must sign the printed copy of the form and have the Form 1295 notarized. The notarized completed Form 1295 containing the unique certification number then must be submitted with Respondent’s submittal to City, pursuant to this solicitation, to ensure City and Respondent meet the Code requirements.

Form 1295 must be completed on-line by the business entity. It is accessible at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

As a result of this new requirement imposed upon City by the Code, City is requiring **all** Respondents submitting on **each** project to complete Form 1295, print a copy showing the unique Certification Number and Date Filed in the Certification of Filing box at the upper right corner of Form 1295 for that submittal, sign it, have it notarized and submit it with its submitted proposal.

The City shall review Form 1295 as part of the Minimum Requirements Review performed upon all proposals received. Deficiencies in or missing Form 1295 shall not be a disqualifying error. Instead, the City shall notify a Respondent of any requirements to cure the deficiency and/or to submit/re-submit Form 1295 within two (2) days of notice to remain eligible to be considered for a contract award. The City shall include the selected Respondent’s Form 1295 in its package prepared for the San Antonio City Council’s consideration for contract award.

11. STATEMENT OF QUALIFICATIONS – Respondent’s SOQ should be submitted in a concise format with a description of Respondent’s ability to meet the requirements of this RFP. Emphasis should be on the completeness and clarity of the requested information below:

A. Experience and Qualifications of Respondent’s Firm/Team, Key Personnel and Key Sub-Consultants (35 Points)

- i. Experience: (indexed and labeled as “Tab 10”) – Provide a narrative, in three (3) pages or less, describing Respondent’s team’s qualifications as they relate to the Scope of Work. Include a history of how Respondent’s proposed team has worked together on past similar projects, include the number of years working as a team.

- ii. **Proposed Key Personnel/Organizational Chart (indexed and labeled as “Tab 11”** – Respondent’s key personnel included in this section are expected to be the same personnel that shall be assigned to the Project, if awarded. Respondent shall provide a detailed organizational chart of its firm, identifying key personnel who shall be committed to work on the various tasks for this Project. In addition, Respondent shall provide a narrative description of its organization chart, describing the proposed assignments, roles and responsibilities, lines of authority and communication for each team member to be directly involved with this Project.
- iii. **Resumes (indexed and labeled as “Tab 12”)** – Respondent shall submit one-page resumes for, at minimum, each of its key team members listed under Tab 11. Resumes should link to project sheets and also may include additional previously completed relevant projects not highlighted in the project sheets. Submitted resumes also shall include the license type (if applicable), number of years with his/her firm, number of years of experience in the proposed role.
- iv. **Project Sheets (indexed and labeled as “Tab 13”** – Respondent shall provide project sheets for three (3) successfully completed projects or contracts of similar size and scope in the past five (5) years. For each highlighted project or contract, the project sheet shall include the following:
 - 1. Name and description of the project/contract;
 - 2. Scope of the project/contract;
 - 3. Project Manager and note whether this person will work on this Contract and his/her role planned for this Contract;
 - 4. Budget for project/contract;
 - 5. Project’s/Contract’s proposed completion date and actual completion date (explain inconsistencies);
 - 6. Names of the Team members who worked with on the project/contract. Respondent shall indicate if those Team members still are retained by Respondent.
 - 7. The project/contract Owner’s name and the name of the representative (if different) who served as the day-to-day liaison for the project/contract in the following format:
 - Name of Owner: _____
 - Name of Owner’s representative: _____
 - Representative’s Phone Number: _____
 - Representative’s E-mail: _____

B. Project Management Plan (25 Points)

This information should include the firm’s proposed organizational structure and availability of labor resources (capacity to perform) in executing the firm’s effort. Respondent shall submit information in a brief narrative plan clearly and concisely describing the organization and plan regarding the contract management and execution.

- 1. Describe your team’s project management plan and team organization for the provision of the services outlined in this RFP.
- 2. Describe your team’s plan and ability to coordinate work with all stakeholders.
- 3. Describe your team’s Quality Control/Quality Assurance Process, approach and capabilities to maintain quality control of the services outlined in this RFP.
- 4. Describe your team’s plan to assure timely completion of projects or tasks, including methods for schedule recovery, if necessary.
- 5. Describe your team’s customer service philosophy and how that philosophy will be applied to the requested Scope of Services.

6. Describe your team's proposed Operating Plan including service categories, specific tasks, staff assigned and schedule of events as it relates to the services described in this RFP.
7. Describe the team's conflict resolution as it relates to the services described in this RFP.

C. Team's Experience with San Antonio Region Issues and past experience with City of San Antonio contracts (10 Points)

City is interested in evaluating Respondent's experience with San Antonio issues, as may be evidenced by work in San Antonio and/or the surrounding area during the past ten (10) years. In narrative form using a maximum of two (2) pages, briefly describe Respondent's experience (if any) in the following areas, referencing projects relating to that experience. Note: Respondent may reference projects included in project sheets under "**Tab 13**" herein or include other projects, but no additional project sheets should be provided for this evaluation. This information shall be indexed and labeled as "**Tab 15**".

- Local area construction costs and practices;
- Local environmental community, conditions and constraints;
- Involvement in project development as it relates to public awareness in the local area;
- Respondent's experience with private and public utilities within the San Antonio or surrounding area;
- Local site development;
- Building code requirements; and
- City of San Antonio Design Guidelines

A portion of the scoring for these criteria will be based on City's Consultants' Scorecard, other documentation and/or Respondent's experience and performance on other City projects. City may consider the history of the firm in complying with project programs, schedules and budgets on previous City of San Antonio projects. **No items shall be submitted by Respondent for this criterion and Respondent shall not be penalized if it has not done work on City of San Antonio projects.** Specific items for consideration may include, but are not limited to:

- Timely completion of City projects;
- Cooperative working relationship with City;
- Prompt payment of Subcontractors at all levels;
- Compliance with other contract terms;
- Compliance with City Ordinances on substitution/addition/deletion of Subcontractors;
- Provision of contracting opportunities for S/M/WBEs;
- Compliance with City standards;
- Conformance to City budget requirements.

D. Fee Proposal (15 Points)

See attached Form 6 - "Fee Proposal"

E. SBE Prime Contract Program – (15 Points)

Certified SBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area responding to this solicitation as Prime Contractors proposing at least 51% SBE participation (Prime and/or Subcontractor) will receive fifteen (15) evaluation criteria percentage points.

No evaluation criteria percentage Points will be awarded to non-SBE Prime Contractors through subcontracting to certified SBE firms.

Evaluation Criteria:	Maximum Points
A. Experience and Qualifications of Respondent's Firm/Team, Key Personnel and Key Sub-Consultants (35 Points)	35 points
B. Proposed Management Plan	25 points
C. Team's Experience with San Antonio Region Issues & Past Experience with City of San Antonio contracts	10 points
D. Fee Proposal	15 points
D. SBEDA SBE Prime Contract Program	15 points
TOTAL	100 points

VI. SUBMISSION INSTRUCTIONS

When submitting a Statement of Qualifications in person to the City Clerk's Office, visitors to City Hall must allow time for security measures. Visitors to City Hall shall be required to enter through the east side of the building. The public shall pass through a metal detector and x-ray machine located in the lobby. All packages, purses and carried items shall be scanned during regular business hours of 7:45 a.m. to 4:30 p.m. After the public proceeds through the metal detector, they shall sign in and receive a visitor's badge. For those that might require the use of a ramp, entry is available on the south side of the building (Dolorosa side). Security shall meet the visitor in the basement with a hand scanner.

Respondent shall submit a total of **four (4)** Qualification Statements, which shall include one (1) original unbound Qualification Statement, signed in ink as one (1) copy of the entire submittal in an Adobe PDF format on a compact disk (CD) or flash-drive in a sealed package, clearly marked on the front of the package "**RFP: On Call Building System Testing, Adjusting & Balancing Services.**" All submittals must be received in the City Clerk's Office at **NO LATER THAN 2:00 p.m. on Tuesday, April 19, 2016** the address indicated below. Any submittal received after this time shall not be considered.

Physical Address:
City Clerk's Office
Attn: Transportation and Capital Improvements Department
100 Military Plaza
City Hall, 1st Floor,
San Antonio, Texas 78205

Submittals sent by facsimile or email shall not be accepted.

Responses to this solicitation should be complete and well organized. Adherence to the maximum page criterion is critical; each page side (maximum 8 1/2" x 11") with criteria information shall be counted. Respondent shall adhere to the page limitations for each section, as stated herein. Pages which have project photos, charts, and graphs shall be counted towards the maximum number of pages. Front and back covers, Table of Contents pages and tabbed divider pages shall not be counted if they do not contain submittal information. The use of recycled paper is encouraged. Three-ring binders are **NOT** permitted. With regard to other types of binding, plastic (not metal) spiral or "comb" binding is highly recommended. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond which is sufficient to present a complete and effective submission are not required. All pages shall be numbered. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites or URLs shall not be included as part of the proposal, other than the CD specified above. Each submittal must include the sections and attachments in the sequence listed in the RFP Section V., Submittal Document Requirements, and each section must be divided by tabs and indexed as indicated in this RFP. Failure to meet the above conditions may result in disqualification of the proposal.

Respondents who submit responses to this RFP shall reveal, disclose and state the true and correct legal name of the individual, proprietorship, corporation and/or partnership (clearly identifying the responsible General Partner and all other Partners who would be associated with the contract, if any). No nick-names, abbreviations (unless part of the legal title), shortened, short-hand, or local "handles" shall be accepted in lieu of the full, true and correct legal name of the entity. Names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of its Proposal.

VII. AMENDMENTS TO THE RFP

Changes, amendments or written responses to questions received in compliance with **Section VIII, Restrictions on Communication** may be posted by the City on the City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to Respondent's submission of its proposal. A Respondent who does not have access to the Internet must notify the City, in accordance with **Section VIII, Restrictions on Communication**, Respondent wishes to receive copies of changes, amendments or written responses to questions by mail or facsimile.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in this RFP and changes to this RFP – if any – shall be made only in writing.

VIII. RESTRICTION ON COMMUNICATION

Once this RFP is released, Respondent is prohibited from communicating with City staff regarding this RFP or its Submittal, with the following exceptions:

Respondent is prohibited from communicating with elected City officials and their staff regarding this RFP or Respondent's submittal from the time this RFP has been released until the contract is posted as a City Council agenda item. Respondent is prohibited from communicating with City employees from the time this RFP has been released until the contract is awarded. These restrictions on communications extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of this RFP and/or Respondent's submittal. Violation of this provision by Respondent, its agent(s), representative(s) and/or employee(s) may lead to disqualification of Respondent's submittal from consideration. Exceptions to the restrictions on communication with City employees include:

1. Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.

2. Respondents may submit written questions concerning this RFP to the TCI Contract Services Staff contact listed below until **3:00 p.m. on Thursday, April 7, 2016**. Questions received after this stated deadline shall not be answered. It is suggested that all questions be sent by electronic mail or by fax.

Questions sent by certified mail, return receipt requested, also shall be accepted and should be addressed to:

Maria Godina
Senior Management Analyst
City of San Antonio, Transportation and Capital Improvements Department
Contract Services Division
114 W. Commerce Street, 9th Floor, Room 909
San Antonio, TX 78205
Maria.godina@sanantonio.gov
Fax: 210-207-4034

3. Respondent and/or its agents are encouraged to contact Mr. David Rodriguez at (210) 207-0071 or by e-mail at David.Rodriguez3@sanantonio.gov for assistance or clarification with issues specifically related to the City's Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA forms. **This exception to the restriction on communication does not apply and there shall be no contact permitted regarding this solicitation, after the solicitation closing date.**
4. Respondent shall provide responses to questions asked of it by the TCI Contract Services staff after responses are received and opened. During interviews, if any, verbal questions and explanations shall be permitted. If interviews are conducted, Respondent shall not bring lobbyists. The City reserves the right to exclude any persons from such selection committee meetings it deems in its best interests.

IX. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

It is the intent of the City of San Antonio to award a contract or contracts to the Respondent/team whose services provide the best value for the City, based on the selection criteria set out in this RFP, in this first phase of the solicitation process. In second phase of the solicitation, the City may consider the relative importance of price, capability and other published evaluation criteria in determining the best value to the City. The City reserves the right to adopt the most advantageous interpretation of the SOQ and additional information it is presented.

1. The contract, if awarded, shall be awarded to the Respondent Firm whose submittal is deemed most qualified and of the best value to City, as determined by the selection committee and subject to approval of the San Antonio City Council.
2. The City may accept any submittal in whole or in part. If subsequent negotiations are conducted, those negotiations shall not constitute a rejection or alternate solicitation on the part of the City. However, final selection of a firm is subject to San Antonio City Council approval.
3. The City reserves the right to accept one or more submittals or reject any or all submittals received, in response to this RFP and the subsequent interview process, and to waive informalities and irregularities in submittals received. The City further reserves the right to terminate this solicitation for the Projects listed, reissue a subsequent solicitation and/or remedy technical errors in the process.
4. The City shall require the selected Respondent to execute a contract with City in substantially the same form as the contract attached to this solicitation, prior to City Council award. No work shall commence until the City signs the contract document(s) and the selected Respondent provides the necessary evidence of insurance as required in the contract. Contract documents are not binding on the City until approved by the City Attorney.

5. In the event the selected Respondent and City cannot negotiate and execute a contract within the time specified by City, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
6. This solicitation does neither commit City to enter into a contract nor award any services related to this solicitation and this solicitation does not obligate City to pay any costs incurred by Respondent in preparation or submission of a response or in anticipation of a contract.
7. The successful Respondent must be able to formally invoice City for services rendered, incorporating the SAP-generated contract and purchase order numbers that shall be provided by City. City administers its design and construction management through an internet-based management system. All vendors are required to comply with Specification 700 of City of San Antonio Standard Construction Specifications.
8. **Conflicts of Interest.** Respondent acknowledges that it is informed and aware the Charter of the City of San Antonio and the City of San Antonio Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: City officer or employee; his parent, child or spouse; a business entity in which he/she or his/her parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
9. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of City's Ethics Code. (Discretionary Contracts Disclosure – Form 3 in this RFP).
10. **Independent Contractor.** Respondent accepts, agrees and understands, if selected, it and all persons designated by it to provide services in connection with a contract is/are and shall be deemed to be an independent contractor(s), responsible for its/their respective acts or omissions, the City shall in no way be responsible for Respondent's actions and that none of the parties hereto shall have authority to bind the other or to hold out to third parties it has such authority.
11. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires persons or their agents who seek to contract for the sale or purchase of property, goods or services with the City shall file a completed Conflict of Interest Questionnaire (hereafter referred as "CIQ"), with the San Antonio City Clerk not later than the seventh (7th) business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposal, offers, correspondence or another writing related to a potential agreement with the City. The CIQ form is available from the Texas Ethics Commission at:

<http://www.ethics.state.tx.us/forms/CIQ.pdf>.

In addition to the CIQ form, the City requires individuals to submit a CIQ Addendum. The CIQ Addendum is available from the City of San Antonio at:

<http://www.sanantonio.gov/atty/ethics/pdf/OCC-CIQ-Addendum.pdf>.

Completed CIQ forms and CIQ addendum forms may delivered by hand to the Office of the City Clerk at City Hall, 100 Military Plaza, San Antonio, TX 78205 or may be mailed to the Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. Respondent shall consult its own legal advisor if it has any questions regarding the statute, CIQ form or CIQ Addendum

12. Respondent's submittal and/or any portions thereof become the property of the City upon receipt and shall not be returned. Any information deemed to be confidential by Respondent clearly should be noted on the page(s) where confidential information is contained. However, the City cannot guarantee that it shall not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a court order.
13. Any cost or expense incurred by Respondent associated with the preparation of its submittal, the Pre-Submission Conference (if any) or during any phase of the selection process shall be borne solely by Respondent.
14. Subsequent to the issuance of this solicitation, TCI reserves the right to amend this solicitation, waive any requirement or irregularity therein and/or request modifications to a Respondent's submittal, providing all Respondents are treated equally, and/or reject any and all submittals for any reason. TCI further reserves the right to award one or more contracts for this Project, as deemed in the City's best interest, and to request changes in the composition of any Respondent's team.
15. **Solicitation Review Process.** Any Respondent desiring a review of the solicitation process must deliver a written request to the TCI Director within seven (7) calendar days from the date the notice of non-selection was sent by the City. When the TCI Director receives a timely written request, the TCI Director, or his/her designee, shall review both Respondent's concerns and the solicitation process for legitimacy and procedural correctness. After performing a full review, the TCI Director shall notify Respondent in writing of his/her determination.
16. **Debriefings.** In an effort to improve solicitation responses, TCI is making available on its web site a "Solicitation Response Tip List" that includes the top common items TCI has identified historically "make or break" submissions. Providing this information prior to the due date of the Respondent's submittal provides an opportunity for Respondent to develop a better submission for this solicitation. As a result of this up-front effort, following the San Antonio City Council's award of a contract associated with this solicitation, Respondent is entitled to a debriefing (limited to one (1) debriefing per calendar year) regarding this solicitation if:

(a) Respondent is not the selected Respondent; and

(b) Respondent has not been debriefed since January 1, 2016.

Once a firm has been debriefed, it shall not be eligible for future debriefings within that calendar year. Any Respondent meeting the above criteria that desires an individual submittal debriefing must deliver a written request to the TCI Contract Services Division within seven (7) calendar days from the date a notice of non-selection was sent.

X. SBEDA ORDINANCE COMPLIANCE PROVISIONS

A. Solicitation Response and Contract Requirements and Commitment

Respondent (also referred to as "Consultant" or "Respondent/Consultant" herein) understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE subcontracting goal shall render its response NON-RESPONSIVE.

Waiver Request - Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request* form (which is available at <http://www.sanantonio.gov/edd/SmallBusiness>) with its solicitation response. The Respondent's Waiver request must fully document subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.**

Exception Request - Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/edd/SmallBusiness>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (hereafter referred to as "API") – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (hereafter referred to as "S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – refers the process by which City's Small Business Office (hereafter referred to as "SBO") staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (hereafter referred to as "ESBEs") automatically are eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Centralized Vendor Registration System (hereafter referred to as "CVR") – refers to a mandatory electronic system wherein City requires all prospective Respondents and Sub-Consultants ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and

tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing annual aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – means a S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Respondent/Consultant to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by City as fraudulent if Respondent/Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Respondent/Consultant shall not be given credit for the participation of its S/M/WBE Sub-Consultant or joint venture partner towards attainment of S/M/WBE utilization goals, and Respondent/Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

Emerging SBE (ESBE) – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories, that is no more than five years old at the time of its original certification as an ESBE or whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, that is actively enrolled in the Mentor-Protégé Program for its Industry (once established by the City), and meets the Significant Business Presence requirements as defined herein.

Emerging M/WBE – a certified M/WBE firm that is no more than five years old at the time of its original certification as an Emerging M/WBE that is actively enrolled in the M/WBE or SBE Mentor-Protégé Program for its industry (once established by City), whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

Good Faith Efforts – means the documentation of Respondent's/Consultant's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following:

(1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or

(2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms;

documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Respondent's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – means a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria:

(1) it must be owned and Controlled by U.S. citizens;

(2) at least 35 percent of its employees must reside in a HUBZone; and

(3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – means the ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – means an adult person that is of legal majority age.

Industry Categories – means procurement groupings for City inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – refers to a firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by City.

M/WBE Directory – refers to a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – means any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises.

Minority Group Members – refers to African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – refers to a City department or authorized representative of City which issues solicitations or for which a solicitation is issued.

Payment – refers to the dollars actually paid to Respondent/Consultant and/or Sub-contractors and vendors for City contracted goods and/or services.

Prime Contractor – refers to the vendor or contractor to whom a purchase order or contract is issued by City for purposes of providing goods or services for City. For purposes of this agreement, this term refers to the Respondent/Consultant.

Relevant Marketplace – refers to the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – refers to a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City. For purposes of this agreement, Consultant is the Respondent.

Responsible – refers to a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – refers to a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – refers to the Relevant Marketplace, the geographic market area from which City MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory – refers to a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – refers to a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration

(SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – refers to the office within the Economic Development Department (EDD) of City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – refers to the Assistant Director of the EDD of City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – refers to the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Solicitation Incentives – refers to additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Architecture and Engineering services, Construction, Goods & Supplies, Professional Services, and Other Services contracts, including change orders and amendments.

Subcontractor – refers to any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the Respondent/Consultant and its Sub-consultants shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Subcontractor/Supplier Utilization Plan – refers to a binding part of this contract agreement which states the Respondent/Consultant's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Respondent/Consultant's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Suspension – refers to the temporary stoppage of the SBE or M/WBE firm's beneficial participation in City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Respondent/Consultant and/or S/M/WBE firm's performance and payment under City contracts due to City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Women Business Enterprises (WBEs) – refers to any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As Respondent/Consultant acknowledges that the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City's SBEDA Policy & Procedure Manual are in furtherance of the City's efforts at economic inclusion and, moreover, that such terms are part of Respondent/Consultant's scope of work as referenced in City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Respondent/Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by City. Without limitation, Respondent/Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Respondent/Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Respondent/Consultant's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. Respondent/Consultant shall cooperate fully with City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Respondent/Consultant or its Sub-consultants or suppliers;
3. Respondent/Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. Respondent/Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Respondent/Consultant's Sub-consultant / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Respondent/Consultant to replace the Sub-consultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Respondent/Consultant of work previously designated for performance by Sub-consultant or supplier, substitutions of new Sub-consultants, terminations of previously designated Sub-consultants, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. Respondent/Consultant shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
6. Respondent/Consultant shall retain all records of its Sub-consultant payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final

determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Respondent/Consultant's Sub-consultant / Supplier Utilization Plan, the Respondent/Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Respondent/Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. Respondent/Consultant acknowledges that City will not execute a contract or issue a Notice to Proceed for this project until the Respondent/Consultant and each of its Sub-consultant for this project have registered and/or maintained active status in City's Centralized Vendor Registration System, and Respondent/Consultant has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. Respondent/Consultant hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Respondent/Consultant affirms that if it is presently certified as an SBE, Respondent/Consultant agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the Respondent/Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Respondent/Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Respondent/Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Respondent/Consultant shall incorporate this clause into each of its Sub-consultant and supplier agreements entered into pursuant to City contracts.

G. Prompt Payment

Upon execution of this contract by Respondent/Consultant, Respondent/Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Sub-consultant's, including HUBZone Sub-consultant's, to ensure that the Respondent/Consultant's reported subcontract participation is accurate. Respondent/Consultant shall pay its Sub-consultants in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Respondent/Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Respondent/Consultant, and no new City contracts shall be issued to the Respondent/Consultant until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, Respondent/Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Respondent/Consultant or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).